

SUMTER COUNTY BOARD OF COMMISSIONERS
EXECUTIVE SUMMARY

SUBJECT: Set Road Impact Fee Review Hearing for Florida Grande Motor Coach Resort, Inc. for December 8, 2009, at 5:00 p.m. (Staff recommends approval).

REQUESTED ACTION: Set Road Impact Fee Review Hearing for Florida Grande Motor Coach Resort, Inc. for December 8, 2009, at 5:00 p.m. (Staff recommends approval).

☐ Work Session (Report Only) **DATE OF MEETING:** 11/10/2009
☒ Regular Meeting ☐ Special Meeting

CONTRACT: ☒ N/A Vendor/Entity: _____
Effective Date: _____ Termination Date: _____
Managing Division / Dept: Planning

BUDGET IMPACT:

☐ Annual **FUNDING SOURCE:** _____
☐ Capital **EXPENDITURE ACCOUNT:** _____
☒ N/A

HISTORY/FACTS/ISSUES:

On November 4, 2009, the County received a request from David R. Brittain, on behalf of Florida Grande Motor Coach Resort, Inc., for a review hearing with the Board regarding the imposition of County road impact fees for the Florida Grande Motor Coach Resort (Project) located in the City of Center Hill. This request is made pursuant to Section 20-47 of the County's Road Impact Fee Ordinance.

Prior to October 1, 2009, all building permitting for the Project occurred with the City of Center Hill and the County was not part of the building permitting process. On October 1, 2009, pursuant to the Interlocal Service Boundary Agreement between the County and the City of Center Hill, the County began providing building permitting services to the City of Center Hill. After the County became the building permitting organization for the City of Center Hill, County staff determined that Florida Grande Motor Coach Resort never paid county road impact fees for their 499 lot recreational vehicle subdivision pursuant to the County's road impact fee ordinance.

Although the discovery of the non-payment of road impact fees occurred after the effective date of the current County road impact fee ordinance, Staff calculated the road impact fee due based on the previous road impact fee rate schedule. This determination was made due to the fact that the Project was platted in 2007, prior to the effective date of the current road impact fee ordinance (October 12, 2009). Based on the old road impact fee rate, staff informed Florida Grande Motor Coach Resort that road impact fees in the amount of \$173,153 are due to the County prior to the issuance of any building permits within the Project. If the road impact fee calculation was based on the current road impact fee rate, then the road impact fee due would be \$284,929. Staff's determination of utilizing the old road impact fee rate saves Florida Grande Motor Coach Resort, Inc. \$111,776.

In the letter dated November 4, 2009, Florida Grande Motor Coach Resort, Inc. objects to the imposition of the County road impact fee and proposes an alternative methodology to assess and collect road impact fees for the Project. Section 20-47 of the County's Road Impact Fee Ordinance provides for the Board to hold a review hearing to consider the imposition and collection of a road impact fee and to approve an alternative procedure for assessment and collection.

Section 20-47 of the County's Road Impact Fee Ordinance requires the Board hold a review hearing within 60 days of the request for the hearing. In order to provide sufficient time for the County Attorney and Staff to review and provide a recommendation regarding the November 4, 2009, letter from Florida Grande Motor Coach, Inc., Staff requests the Board set the review hearing for December 8, 2009, at 5:00 p.m. at the Government Offices in Bushnell. The December 8, 2009, date is within the 60 day window provided in the ordinance.

In addition, if Florida Grande Motor Coach, Inc. desires to obtain a building permit prior to December 8, 2009, Florida Grande Motor Coach Resort, Inc., may pay the road impact fee due to the County "under protest". If the Board approves an alternative method for the imposition and collection of the road impact fee at the December 8, 2009, hearing, then the road impact fee paid "under protest" will be refunded at a pro rata basis to Florida Grande Motor Coach Resort, Inc.

TAMPA

November 4, 2009

*Via Electronic Mail
and FedEx*

Brad Cornelius, AICP
Planning Manager
Sumter County
910 N. Main Street, Suite 301
Bushnell, FL 33513

RE: Florida Grande Motor Coach Resort, Inc.
--- Impact Fees Claimed By Sumter County, Florida
Our File No. 07-2034

Dear Mr. Cornelius:

This firm represents Florida Grande Motor Coach Resort, Inc. ("**Florida Grande**") in connection with the above matter. Please let this letter serve as the request for a review hearing described in Section 20-47 of Sumter County Ordinance 2009-14.

Florida Grande, whose contact address is 200 2nd Avenue South, #463, St. Petersburg, Florida 33701; attn: Mr. Bill Maloney, is the developer of Florida Grande Motor Coach Resort, a development of 499 platted subdivision lots which have been designed for recreational vehicle use and are being marketed for sale in fee simple to consumers (the "**Project**"). The project is located at 9750 SE 48th Street, City of Center Hill, Sumter County, Florida 33514 and is legally described in Exhibit "A" attached to this letter. Approximately 220 of these 499 lots have already been sold to consumers as of this date.

We understand from our discussions with Florida Grande and its consultants that Sumter County has advised it that it owes approximately \$173,000 in lump sum, County-mandated transportation impact fees, in addition to fees and expenses that Florida Grande has paid under a Development Agreement with the City of Center Hill. We further understand that the County bases the claim for impact fees on the terms of Ordinance No. 2009-14, which was adopted by the BOCC on July 14, 2009.

To summarize the background facts, although the Project was annexed into the City of Center Hill in 2006 and the City has performed most of the permitting and inspections until recently, Sumter County has been well aware of the various steps in development Project since

its inception. For example, in or around late 2005 or early 2006, the BOCC heard a petition at one of its meetings regarding acceptance of the Project into unincorporated Sumter County. The county planning director at the time was involved in those discussions. However, the BOCC made no decision at that hearing because Florida Grande had elected to allow the annexation of the Project into the City of Center Hill, thereby eliminating the need for county involvement. In numerous other ways since the inception of the Project, Sumter County has been made aware of the permitting status of the Project, as well as the activities of Florida Grande and the City of Center Hill in issuing the permits.

In or around March, 2006, the then-President of Florida Grande, Mr. David Peterson, negotiated a Developer Agreement with the City of Center Hill to allow the project to proceed. In connection with that agreement, the City permitted Florida Grande to pay a lump sum of \$200.00 in connection with the sale of each residential lot in the Project (to date, resulting in payments totaling approximately \$40,000 to the City), along with a lump sum payment of \$50,000, to be used for City improvements as determined by the City Council upon application for the first building permit submitted. The City subsequently issued multiple building permits to Florida Grande, including an initial permit for construction of the clubhouse (CH2006) on August 8, 2006. The City thereafter issued permits for construction of improvements to each lot as the lots were sold. In each case, Florida Grande remitted the sum of \$200.00 to the City in accordance with the Development Agreement.

The City of Center Hill informed Florida Grande that, effective on October 1, 2009, it outsourced all building inspections within its limits to Sumter County. Unfortunately, the clubhouse building permit that had initially been issued to Florida Grande had expired, so Florida Grande applied to Sumter County for a new building permit. Review of the clubhouse permit progressed normally through the County and Florida Grande's contractor attempted to pick up the permit.

At that time, however, the County informed Florida Grande that although its new impact fee ordinance, Ordinance No. 2009-14, applied to the Project, rather than require payment of the new impact fee of \$571.00 per lot it would collect impact fees at the rate under the previous ordinance of \$347.00 per lot. However, the County stated that it would require lump sum payment of the *entire impact fee based on all 499 lots in the Project* (totaling approximately \$173,000) as a condition of issuing the new clubhouse building permit. This application of the impact fee is a major shock to Florida Grande (particularly in view of the history outlined above) and will significantly disrupt both its construction program and Project financing.

Florida Grande therefore respectfully files this request for hearing review by the BOCC by reason of its disagreement with the application or calculation of road impact fees, as provided in Section 20-47 of the Ordinance. At the outset, we want to be clear that Florida Grande believes that, legally, it and the Project are exempt from the Ordinance or, alternatively, that

Sumter County has waived or is estopped to collect any impact fees against it or the Project by virtue of (1) the Development Agreement, (2) the actions of the City of Center Hill, and (3) the knowledge of the County and its employees of the foregoing as well as County participation in other ongoing development and sales activities of Florida Grande. Moreover, during the period from May 15, 2007 to the present, Florida Grande has been the subject of a reorganizing bankruptcy under Chapter 11 of the federal Bankruptcy Code (Middle District of Florida Bankruptcy Court, Case No. 07-bk-04022-CPM), previous to which filing approximately 59 lots already had been sold to consumers. Even assuming that impact fees to Sumter County were due, the confirmation of Florida Grande's Chapter 11 Plan of Reorganization on June 26, 2008 (as modified by Orders of December 31, 2008 and August 31, 2009) would have discharged the impact fees payable with respect to all lots sold prior to the bankruptcy.

However, Florida Grande, in the interest of maintaining a cooperative and amicable relationship with Sumter County, would be willing to accept a determination of the BOCC with respect to County impact fees due under the following reasonable parameters:

1. The fees would be calculated at the rate of \$347.00 per lot applicable under the former Sumter County impact fee ordinance, rather than the \$571.00 per lot that is applicable under the new ordinance.

2. With respect to unsold lots still owned by Florida Grande, it would collect the impact fees for each lot at closing of sale, based on the old impact fee ordinance rate, consistent with Florida Grande's current practice of collecting fees for the City. However, Sumter County would waive collection of all the impact fees at the old or new impact fee ordinance rates from all lot owners who have already closed and accepted a deed to their lots. This would affect approximately 220 lot owners as of this date, who would be hurt by imposition of the unexpected impact fees and have already paid, at their closings, a \$200.00 per lot sum to the City of Center Hill, as mentioned above.

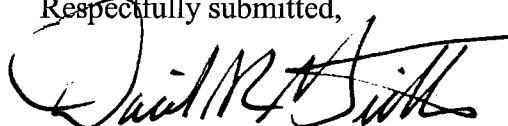
3. Sumter County would issue a building permit for the resort clubhouse and any other on-site amenities, without payment of any impact fees at time of issuance, since these facilities are non-residential, used only inside the park by park residents, and therefore have no net "impact" on transportation infrastructure. These are not appropriate "triggering" events for transportation impact fees. Collecting impact fees on a "pay-go" basis in connection with sales of lots protects the reasonable interests of both Florida Grande, which may not be able to sell many additional lots during the current recession economy (or sell them very slowly), and Sumter County, which will eventually receive the impact fees in time to cover actual transportation impacts generated by actual lot sales.

The above is a good faith proposal to resolve the current difference of opinion between Florida Grande and Sumter County that attempts to do justice to both sides. It also recognizes

the substantial out- of- pocket expense that Florida Grande that has incurred to date in the form of payments to the City of Center Hill (approximately \$90,000.00) and off-site traffic improvements constructed by Florida Grande in front of the project (turn-lane work and related improvements costing approximately \$200,000.00). The total of these costs to date is more than \$290,000.00.

If Sumter County is unwilling to accept the above interpretation for application of it impact fee ordinances, then Florida Grande reserves it legal rights with respect to the validity and application of the impact fee ordinance.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David R. Brittain", written over a horizontal line.

David R. Brittain
Trenam Kemker
101 E. Kennedy Boulevard
Suite 2700
Tampa, Florida 33602
Attorneys for Florida Grande

EXHIBIT "A"

LEGAL DESCRIPTION

PARCEL 1:

Lots 1 through 499, inclusive, of FLORIDA GRANDE MOTOR COACH RESORT, as depicted on the Plat thereof as filed in Plat Book 9, Pages 31, 31A to 31U, inclusive, of the Public Records of Sumter County, Florida

And

PARCEL 2:

Tracts identified as Tracts "A" through "H", inclusive, and "J" through "N", inclusive, and "P" through "V", inclusive, of FLORIDA GRANDE MOTOR COACH RESORT, as depicted on the Plat thereof as filed in Plat Book 9, Pages 31, 31A to 31U, inclusive, of the Public Records of Sumter County, Florida, and as further described in the Declaration of Covenants, Conditions and Restrictions of FLORIDA GRANDE MOTOR COACH RESORT, recorded at Official Records Book 1720, Page 429, as amended.

TOGETHER with all easements appurtenant to the above-described property created by that certain Easement and Use Agreement recorded in Official Records Book 1720, Page 410, of the Public Records of Sumter, County, Florida.